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Message Text

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ORIGIN OPIC-06

INFO OCT-01 ARA-06 ISO-00 EB-08 L-03 TRSE-00 SS-15 SY-05
INR-07 FS-01 ABF-01 /053 R

DRAFTED BY OPIC/GC:RSTERN
APPROVED BY EU/IFD/OIA:RSMITH
L/EB:SBOND (DRAFT)
EB/IFDS/OIA:DSTEBBING (DRAFT)
ARA/ECP:DTAHER (DRAFT)
ARA/AND:DCOX (DRAFT)
----------160532Z 057911 /14
R 152303Z PEB 77
FM SECSTATE WASHDC
TO AMEMBASSY BOGOTA

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FROM OPIC

E.O. 11652: N/A

TAGS: EINV, CO

SUBJECT: CABOT CORPORATION INCONVERTIBILITY CLAIM

REF: (A) STATE 275058; (B) 76 BOGOTA 11612; (C) 77 BOGOTA 01120; AND (D) TREASURY 387L

1. OPIC AND DEPARTMENT SHARE EMBASSY'S CONCERNS AS SET OUT IN REFTEL (B) AND (C) REGARDING THE POSSIBLE ILLEGALITY OF THE PROCEDURE OUTLINED IN REFTEL (A) INSOFAR AS IT INVOLVES THE USE OF THE FUNDS IN COLOMBIA BY THE USG. INDEED, OPIC ITSELF FIRST RAISED THESE CONCERNS IN PARA 3 OF REFTEL (A) AND HEEDED THE EMBASSY'S ADVICE NOT TO FOLLOW THE CONTEMPLATED PROCEDURE OF IMMEDIATELY RECEIVING AND UTILIZING
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THE FUNDS. INSTEAD, OPIC FIRST PROCESSED CABOT'S CLAIM AND DETERMINED THAT IT WAS VALID UNDER THE INSURANCE CONTRACT. OPIC WAS UNDER CONTRACTUAL OBLIGATION TO PAY CABOT BY JANUARY 7. UNDER RESULTING TIME PRESSURES TO FOCUS ON CLAIM MERITS, OPIC WAS UNABLE TO ADDRESS EMBASSY CONCERNS EXPRESSED REFTEL (B) AND REGRETS ANY INCONVENIENCE

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THIS PROCEDURE MAY HAVE CAUSED.

2. OPIC THEN DETERMINED TO RECEIVE THE FUNDS INTO A FROZEN ACCOUNT WITH INSTRUCTIONS THAT THE FUNDS WERE NOT TO BE USED UNTIL INSTRUCTIONS TO TRANSFER WERE GIVEN. THE DEPARTMENT'S LEGAL ADVISER'S OFFICE HAS CONCURRED IN THIS PROCEDURE. SEVERAL FACTORS WERE TAKEN INTO CONSIDERATION IN DECIDING TO PROCEED IN THIS MANNER, I.E., RECEIVING THE FUNDS NOW WHILE EXAMINING THE QUESTIONS ATTENDANT TO USE:

A. THE ISSUANCE OF AN INSURANCE CONTRACT TO CABOT WAS SPECIFICALLY APPROVED BY THE GOC AND THE CONTRACT PROVIDES FOR AND REQUIRES CABOT TO TRANSFER THE LOCAL CURRENCY WHICH IS THE SUBJECT OF THE INCONVERTIBILITY CLAIM. IT IS NOTED THAT THE PRIMARY PURPOSE OF THE OPIC INCONVERTIBILITY INSURANCE, WHICH WAS WELL UNDER-STOOD BY THE GOC WHEN IT APPROVED ISSUANCE OF THE CONTRACT, IS TO PROTECT THE INSURED AGAINST CHANGES IN LOCAL LAW RESTRICTING RIGHTS OF REPATRIATION. THUS, GOC APPROVAL OF THE ISSUANCE OF THE OPIC CONTRACT TO CABOT NECESSARILY ENTAILS APPROVAL OF, AT LEAST, PAYMENT OF DOLLARS TO CABOT AND RECEIPT OF LOCAL CURRENCY BY OPIC.

B. IT IS UNWISE TO LEAVE THE FUNDS IN THE CONTROL OF A COLOMBIAN CORPORATION, WHETHER OR NOT CONTROLLED BY A PARENT U.S. INVESTOR, SINCE ANY NUMBER OF UNFORSEEN SUBSEQUENT EVENTS COULD AFFECT OPIC'S ABILITY TO OBTAIN THE FUNDS. MOREOVER, AN ADDITIONAL COMPLICATION IS PRESENT IN THE INSTANT CASE. CABOT COLOMBIANA IS ABOUT LIMITED OFFICIAL USE

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TO BE CONVERTED INTO A MIXED CORPORATION. AND SINCE OPIC HAS ALREADY MADE PAYMENT IN DOLLARS TO CABOT, 12 MILLION PLUS PESOS OWED OPIC WOULD BE LEFT IN THE HANDS OF A COLOMBIAN CONTROLLED CORPORATION.

C. RECEIPT OF THE FUNDS INTO A "FROZEN" ACCOUNT WOULD NOT, OF ITSELF, AFFECT COLOMBIA'S FOREIGN EX-CHANGE. ONLY USE OF THE FUNDS WOULD REDUCE THE DOLLARS BROUGHT INTO THE COUNTRY. IF EMBASSY CONSIDERS IT NECESSARY TO AVOID COMPLICATIONS WITH COLOMBIAN TAX REGULATIONS, ACCOUNT COULD BE NON-INTEREST BEARING. PRINCIPAL OBJECTIVE IS TO REMOVE POSSIBILITY THAT THESE FUNDS COULD BE PLACED BEYOND OPIC'S REACH IN LINE WITH ARGUMENTS EXPRESSED ABOVE.

3. A. THE QUESTIONS RAISED IN REFTEL (B), PARAS 3,4, AND CONNECTION WITH USE OF THE FUNDS. WE WILL HAVE TO GET BACK TO YOU ON THESE QUESTIONS.

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B. THE PROCEDURE OUTLINED IN REFTEL (B), PARA 2 IS INCORRECT IN THAT THE PESOS ARE NOT TRANSFERRED TO THE EMBASSY. THE FUNDS ARE TRANSFERRED TO OPIC, WHICH MAY MAKE THEM AVAILABLE TO THE USDO. AS HE USES THEM FOR EMBASSY OR OTHER USG PURPOSES, AND GIVES OPIC DOLLAR CREDIT, THE TRANSFER IS EFFECTED.

(C) REFTEL (B), PARA 6 RAISES AN ISSUE WHICH GOES TO THE MERITS OF CABOT'S CLAIM, WHICH HAS ALREADY BEEN DETERMINED BY OPIC.

4. AS STATED IN REFTEL (D), THE LOCAL CURRENCY IS TO BE RECEIVED BY OPIC; THE BUDGET AND FISCAL OFFICER ACTS ONLY AS OPIC'S AGENT. THESE FUNDS ARE TO BE HELD IN A SEPARATE ACCOUNT AND NO USE OF THEM WILL BE MADE AT THIS TIME. PLEASE CONFIRM RECEIPT OF THIS CABLE AND USDO'S UNDER-STANDING THAT HE IS TO BE PREPARED TO RECEIVE THE DRAFTS.
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5. DEPARTMENT WOULD PREFER THAT EMBASSY NOT CONFER WITH GOC CONCERNING THIS MATTER AT THIS TIME. DEPARTMENT BELIEVES IT IS BEST TO MAKE A THOROUGH EXAMINATION OF THE QUESTIONS INVOLVED AND TO FORMULATE A CONSIDERED POSITION BEFORE APPROACHING GOC. DECONTROL 2/79

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Message Attributes

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Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
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Subject: CABOT CORPORATION INCONVERTIBILITY CLAIM
TAGS: EINV, CO, CABOT CORPORTATION
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Type: TE
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